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April 10, 2012

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

**Re: WT Docket No. 12-17
American Time & Signal Co.
Request for Waiver**

***Ex Parte* Presentation**

Dear Ms. Dortch:

On behalf of the Enterprise Wireless Alliance ("EWA" or "Alliance"), and pursuant to Section 1.1206(b)(2) of the Federal Communications Commission ("FCC") rules, the Alliance is submitting this written *ex parte* communication in the above-entitled proceeding.¹ This filing is needed to respond to certain statements made by PCIA – THE WIRELESS INFRASTRUCTURE ASSOCIATION ("PCIA") in its Reply Comments in the proceeding that purported to address and refute EWA's earlier-filed Comments. While the Alliance is reluctant to add to the record in this matter, PCIA's mischaracterization of EWA's position and of the FCC's waiver standard cannot be ignored.

In its Reply Comments, PCIA turns two issues on their head and blithely asserts that they are standing on their feet. First, it announces that PCIA "supports efficient frequency coordination," which it claims would be accomplished by grant of the American Time & Signal

¹ *Wireless Telecommunications Bureau Seeks Comment on American Time & Signal Company Request for Waiver to Permit Licensing of Certain Fixed Transmitters as Mobile Units*, Public Notice, WT Docket No. 12-17, DA 12-75 (rel. Jan. 23, 2012) ("Public Notice").

Co. (“ATS”) waiver request.² What it means by “efficient frequency coordination” is not clear except with regard to the ATS request itself that PCIA describes as “fit[ting] the same technical and operational profile” as low-power data systems that are permitted by FCC rule to be licensed as mobile units.³

Of course, as noted by the Forest Industries Telecommunications (“FIT”) in its recently filed *ex parte* comments in this proceeding, that reasoning is precisely backwards.⁴ ATS has requested a waiver because its operation does not conform to the FCC rules applicable to low-power data systems.⁵ Even PCIA has acknowledged that the differences between the system ATS wishes to license as mobile-only and the data systems that the FCC by rule allows to be so licensed are “the frequencies involved and the effective radiated power (“ERP”).”⁶ Since those two factors – the frequencies and the ERP – are the essential elements of the the FCC’s low-power rules, PCIA’s suggestion that those rules constitute a precedent that demands identical treatment for ATS,⁷ on its face, is preposterous.

PCIA’s effort to label EWA as somehow anti-efficient frequency coordination because it opposes ATS’s waiver request is unavailing. Frequency advisory committees were certified by the FCC based on a number of factors. Not one of those requirements incorporated performing the coordination process based on what would be easiest and least costly for a single applicant, but rather adhering to a process that will ensure optimal spectrum utilization by all users in these congested bands – the essence of effective frequency coordination. The fact that ATS was misadvised about its regulatory requirements at the outset is unfortunate for the company, but of no significance in determining its obligations.⁸ Neither PCIA nor ATS answered the fundamental issue raised in EWA’s Comments: “If the Section 90.267 power limitations no longer define fixed facilities that may be licensed as mobiles, then what upper power limit would be permitted?”⁹ PCIA is concerned that application of the normal coordination requirements “could potentially create a burden for the hundreds of current education and healthcare users of the clock systems ATS manufactures and sells.”¹⁰ EWA submits that the greater concern should be the impact on Part 90 incumbent and future licensees if the low-power licensing and coordination rules are extended to all fixed data systems, irrespective of ERP.

Second, PCIA argues that, “EWA’s comments failed to refute the public interest benefits of ATS’ application.”¹¹ Like its claim that ATS is entitled to a waiver because of similarities to

² PCIA Reply Comments at 1.

³ *Id.* at 6.

⁴ FIT *ex parte* filing dated Mar. 30, 2012.

⁵ See 47 C.F.R. § 90.267.

⁶ PCIA Reply Comments at 3.

⁷ *Id.* at 2, 5.

⁸ PCIA’s admonishment that it was “highly inappropriate” for EWA to “suggest the imposition of a business plan for an equipment manufacturer,” is so misguided as to require only a brief comment. See PCIA Comments at 5. Any licensee that seeks a waiver of the FCC rules is obligated to demonstrate that it has no reasonable alternative. The fact that ATS designed its system before ensuring its compliance with FCC requirements does not absolve it of that responsibility. EWA’s suggestions went not to ATS’s business plan but to spectrum options appropriate for the implementation of that plan that would not require a waiver.

⁹ EWA Comments at 4-5.

¹⁰ PCIA Reply Comments at 5.

¹¹ *Id.* at 4.

the low-power rules, this argument turns the FCC requirements upside down. FIT is entirely correct in reminding ATS and PCIA that the burden of demonstrating that a waiver would be in the public interest lies with the waiver proponent.¹² It is not up to EWA or others to prove the contrary. Moreover, FIT also is correct that ATS has not made or even attempted to make a showing that there is a public interest in granting the relief requested.¹³ Whatever benefit might accrue would flow entirely to ATS in the form of cost savings and ease of licensing.¹⁴

EWA's Comments in this proceeding acknowledged that ATS's proposal to identify each customer's service area with center coordinates on an MO6 license was a step toward an appropriate licensing approach.¹⁵ But it fails to address two fundamental issues: (i) if 20 ERP is not the upper limit for licensing fixed data facilities as mobiles, what is the triggering power level; and (ii) is ATS the proper licensee for the systems operated exclusively by its customers.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Elizabeth R. Sachs", written in a cursive style.

Elizabeth R. Sachs

¹² FIT *ex parte* at 2.

¹³ *Id.*

¹⁴ In its Reply Comments, ATS responded to EWA's suggestion that the FCC assure itself that ATS satisfies the FCC's control requirements by announcing that there is no control issue in the proceeding because ATS has not requested a waiver of that requirement. ATS Reply Comments at n. 1. But that avoids rather than addresses the issue. ATS's description of the systems it sells raises a question as to whether ATS meets the FCC's control rules vis-à-vis the day-to-day operation of those facilities and, thus, whether it is the proper licensee of those systems. The fact that ATS has not requested a waiver of the control rule certainly is not conclusive as to whether it satisfies the rule.

¹⁵ EWA Comments at 5.

CERTIFICATE OF SERVICE

I, Elizabeth R. Sachs, with the law firm of Lukas, Nace Gutierrez and Sachs, LLP, hereby certify that I have, on this 10th day of April, 2012 caused to be mailed, first-class, postage prepaid, a copy of the foregoing ex parte letter to the following:

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/s/ Elizabeth R. Sachs